

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 29TH

JUSTICE HAINEY

)

DAY OF MARCH, 2021

)

B E T W E E N:

ALTERNA SAVINGS AND CREDIT UNION LIMITED

Applicant



- and -

1140402 ONTARIO INC. O/A EMERALD LODGE

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 1140402 Ontario Inc. o/a Emerald Lodge (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 83 Emerald Inc. (the "**Purchaser**") dated March 12, 2021, as amended from time to time, and appended to the Second Report of the Receiver dated March 22, 2021 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in

the Sale Agreement (the "**Purchased Assets**"), was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel to Alterna Savings and Credit Union Limited, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jesse Mighton sworn March 22, 2021, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated September 25, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any claims of lessors of equipment to the Debtor which equipment is not a Purchased Asset under the Sale Agreement; and (iv) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office #62 of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in blue ink, reading "Hainey J.", is written over a horizontal line. The signature is cursive and stylized.

Schedule A – Form of Receiver's Certificate

Court File No. CV-20-00648456-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

ALTERNA SAVINGS AND CREDIT UNION LIMITED

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- and -

1140402 ONTARIO INC. O/A EMERALD LODGE

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS
AMENDED**

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 25, 2020, Grant Thornton Ltd. was appointed as the receiver (in such capacity, the "**Receiver**") of the undertaking, property and assets of 1140402 Ontario Inc. o/a Emerald Lodge (the "**Debtor**").

B. Pursuant to an Order of the Court dated March 29, 2021, the Court approved the agreement of purchase and sale made as of March 12, 2021, as amended from time to time (the "**Sale Agreement**") between the Receiver and 83 Emerald Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming the delivery by the Receiver or the

Purchaser, as the case may be, of the documents contemplated by Section 7 of the Sale Agreement and the confirmation of receipt by the Receiver's solicitor of the purchase price; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets pursuant to the Sale Agreement;
2. The Purchaser has delivered the documents contemplated by section 7 of the Sale Agreement; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**GRANT THORNTON LTD., in its capacity
as Receiver of the undertaking, property and
assets of 1140402 ONTARIO INC. o/a
EMERALD LODGE, and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

LTS 9, 10, 11 & 12, REGISTRAR'S COMPILED PLAN 1360; HAMILTON; 17176-0014 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

- Instrument No. WE1081631 being a notice of right of first refusal in favour of Riverview Pharmacy Inc.
- Instrument No. WE1387288 being a postponement whereby Riverview Pharmacy Inc. postponed Instrument No. WE1081631 to Instrument No. WE13876262
- Instrument No. WE1416699 being a postponement whereby Riverview Pharmacy Inc. postponed Instrument No. WE1081631 to Instrument No. WE1416590
- Instrument No. WE1430135 being a notice registered by Riverview Pharmacy Inc. relating to Instrument No. WE1081631
- Instrument No. WE1387262 being a charge in favour of Alterna Savings and Credit Union Limited
- Instrument No. WE1387263 being an assignment of rents in favour of Alterna Savings and Credit Union Limited
- Instrument No. WE1416590 being charge in favour of KLN Holdings Inc.
- Instrument No. WE1416593 being an assignment of rents in favour of KLN Holdings Inc.
- Instrument No. WE1457238 being an Order of the Court approving the appointment of Grant Thornton Limited as Receiver

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

None.

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ALTERNA SAVINGS AND CREDIT UNION LIMITED - and - 1140402 ONTARIO INC. O/A EMERALD LODGE

Court File No.: CV-20-00648456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

APPROVAL AND VESTING ORDER

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